

**OPERATIONS AND MAINTENANCE SERVICES
CONTRACT BETWEEN
THE GOVERNMENT OF THE U.S VIRGIN ISLANDS
AND ARROWHEAD CONTRACTING, INC.
FOR REMEDIAL ACTIVITIES RELATED AT THE
TUTU WELLFIELD SUPERFUND SITE
IN ST. THOMAS, U.S. VIRGIN ISLANDS**

DEPARTMENT OF JUSTICE
SOLICITOR GENERAL
2014 NOV -5 AM 9:39

THIS OPERATIONS AND MAINTENANCE SERVICES CONTRACT FOR PROFESSIONAL SERVICES (the "Contract") is entered in the territory of the Virgin Islands, by and between The GOVERNMENT OF THE VIRGIN ISLANDS, Department of Property and Procurement on behalf of, DEPARTMENT OF PLANNING AND NATURAL RESOURCES (hereinafter referred to as "USVI") and ARROWHEAD CONTRACTING, INC., d/b/a Arrowhead Environmental Services, (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

WHEREAS, in the matter of United States of America v. Government of the Virgin Islands, Civil Action No. 09-122, the United States of America ("United States"), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), on behalf of the Administrator of The United States Environmental Protection Agency ("EPA") filed a complaint (hereinafter the "Complaint" or the "Action") against the USVI, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Tutu Wellfield Superfund Site in St. Thomas, U.S. Virgin Islands (the "Site"); and

WHEREAS, on September 29, 1995, the EPA listed the Site on the NPL and on August 5, 1996 issued a Record of Decision that addressed both contaminated soil and ground water at the Site; and

WHEREAS, in 2002 the USVI and the EPA entered into a Superfund State Contract Between the USVI and the U.S. Environmental Protection Agency for Remedial Activities related To the Tutu Wellfield Superfund Site in St. Thomas, U.S. Virgin Islands (the "2002 SSC"), with an Attached Statement of Work ("2002 SOW"); and

WHEREAS, the United States has been operating the treatment system at the site upon the system becoming operational and functional on April 17, 2004 and

WHEREAS, in April 2009, the EPA conducted the first five-year review of the Site, which disclosed that the remedial measures implemented pursuant to the Record of Decision were Effective and were protecting the public health and the environment; and

WHEREAS, pursuant to the provisions of the 2002 SSC, on April 16, 2014, the USVI is Obligated to commence Operation and Maintenance of the remedial measures identified in

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Section K of the 2002 SSC, the 2002 SOW and other measures referred to in the Consent Decree, as hereinafter defined; and

WHEREAS, in performing response action at the site, the EPA incurred response costs and may incur additional response costs in the future; and

WHEREAS, in the Complaint the United States alleges that the USVI may be liable for response costs incurred by the EPA at the Site; and

WHEREAS, in its answer to the Complaint, the USVI denied the allegations and claims for relief and pled a number of affirmative defenses; and

WHEREAS, in order to avoid potentially prolonged and complicated litigation relating to the allegations in the Complaint, the USVI and the EPA have entered into a Consent Decree, attached as Addendum III of the Contract, approved by the District Court of The Virgin Islands and in which the Court finds the parties negotiated in good faith (said Consent Decree hereinafter referred to as the "Consent Decree")(the District Court of the Virgin Islands hereinafter referred to as the "District Court"); and

WHEREAS, in entering into the Consent Decree, the USVI does not admit any liability to the United States or the EPA arising out of the transactions or occurrences alleged in the Complaint, nor does it acknowledge that the release or threatened release of hazardous substance (s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment; and

WHEREAS, pursuant to the terms and conditions of the Consent Decree, the USVI and the EPA have agreed among requirements, that the EPA shall transfer the operations and maintenance of the remedial action at the Site, currently funded and performed by the EPA, to the USVI and that upon said transfer USVI shall assume the obligations and responsibilities of the remedial action at the Site; and

WHEREAS, the USVI has been responsible for the operation and maintenance of the Site from April 16, 2013; and


WHEREAS, USVI procured Contractor's services in conducting, on behalf of the USVI, the continued Operation and Maintenance of the remedial action at the Site; and

WHEREAS, the Contractor did satisfactorily perform the duties under the 2013-2014 Contract; and

WHEREAS, the USVI desires to continue using the Contractor to perform operation and maintenance tasks at the Site; and

WHEREAS, Contractor has represented that it is willing and able to provide such services at the Site,

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NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

1. AUTHORITY

(a) The USVI represents and warrants that:

(i) Existence and powers. The USVI is an unincorporated territory of the United States, duly created and validly existing under the Virgin Islands Revised Organic Act of 1954, as amended (48 U.S.C. § 1541 *et seq.*) and has full legal right, power and authority to enter into and to perform its obligations under this Contract.

(ii) Due Authorization and Binding Obligation. This Contract has been duly authorized, executed and delivered by all necessary action of the USVI and constitutes a legal, valid and binding obligation of the USVI, enforceable against the USVI in accordance with its terms. Attached as Appendix "A" to this Contract is a letter from the Attorney General of the U.S. Virgin Islands certifying that the USVI has legal authority to enter into this Contract and to fulfill its terms.

(b) Contractor represents and warrants that:


(i) Existence and Powers. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas, with full legal right, power and authority to enter into and perform its obligations under this Contract.

(ii) Due Authorization and Binding Obligation. This Contract has been duly authorized, executed and delivered by all necessary corporate action of the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.

(iii) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Contractor of this Contract nor the performance by the Contractor of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Contractor of the terms or conditions hereof: (1) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Contractor; or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(iv) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with any Governmental Body is required for the valid execution and delivery of this Contract by Contractor or the performance of its payment or other obligations hereunder except such as have been duly obtained or made.

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(v) No Litigation. Except as disclosed in writing to USVI, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of Contractor's Knowledge, overtly threatened or publicly announced against the Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Contract by Contractor or the validity, legality or enforceability of this Contract against Contractor, or any other agreement or instrument entered into by Contractor connection with the transactions contemplated hereby, or on the ability of Contractor to perform its obligations hereunder, or under any such other agreement or instrument.

(vi) Governmental Approvals. Contractor has obtained the Governmental Approvals which are required for the performance of the Services under this Contract.

(vii) Applicable Law Compliance. Except as disclosed in writing to USVI, to the best of its knowledge, Contractor is not in material violation of any law, order, rule or regulation applicable to any water or wastewater treatment system providing service to the general public designed, constructed, operated, maintained or managed by Contractor.

(c) As used in this Contract, term "Governmental Approvals" means all orders of approval, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, entitlements and approvals of whatever kind and however described that are required under Applicable Law to be obtained or maintained by any person with respect to the Services under this Contract, including the Consent Decree.

(d) As used in this Contract, the term "Governmental Body" means any federal, state, or local legislative, executive, judicial or other governmental board agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction.

(e) As used in this Contract, the term "Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Service Contract, and all appeals therefrom.

2. SERVICES

AS more particularly described in the Addendum I (Statement of Work) of this Contract, the Contractor shall operate and maintain the remedial measures at the site (said services hereinafter referred to as the "Scope of Work," "Services," or "SOW").

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3. TERM

The Contract shall be effective for a term commencing August 16, 2014 and expiring August 15, 2015. Subject to review and negotiation of the Contract terms, the USVI shall have the option to renew the Contract for three (3) successive twelve (12) month terms. USVI shall give Contractor notice to renew at least sixty (60) days prior to the expiration date of the Contract term then in effect. The option and decision to renew the Contract for any successive term is in the sole discretion of the USVI.

4. COMPENSATION

(a) The Government, in consideration of the satisfactory performance of the services described in Addendum I, agree to pay Contractor, in accordance with the provisions of Addendum II of this Contract, which includes the cost schedule attached as Schedule "A" to said Addendum II, a sum not to exceed *Four Hundred Thousand Dollars (\$400,000)* per annum. (Said cost schedule hereinafter referred to as the "Addendum II Cost Schedule").

(b) In the event that the Government, pursuant to the provisions of Section 3 of the General Provisions of this Contract, exercises its option to renew this Contract for a subsequent twelve (12) month term, the total payment to Contractor for said twelve month term shall not exceed the total annual cost stated in the Addendum II Cost Schedule corresponding to the option period for which the Government renewed the Contract.

5. PROJECT MANAGERS

(a) Contractor has designated Gregory Wallace to serve as Contractor's Project Manager ("CPM") under the Contract.

(b) The USVI has designated the Commissioner of the U.S. Virgin Islands Department of Planning and Natural Resources ("DPNR") and the Director of Environmental Protection at DPNR to jointly serve as the USVI Project Manager ("UPM") under this Contract.

6. GENERAL PROVISIONS

(a) Any capitalized term in this Contract that is not defined in this Contract shall have meaning and definition assigned to said term in the Consent Decree.

(b) USVI shall employ Contractor to do the work described in the SOW. Contractor shall furnish the necessary personnel, materials, services, and facilities to perform the Services.

(c) Contractor shall seek USVI's input on any key decision point relating to the performance of the Statement of Work.

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(d) Contractor and its CPM may not alter any part of the Statement of Work without the prior written approval of the USVI.

(e) Contractor and its CPM may not modify the schedules and activities set out in the Statement of Work without the prior written approval of the USVI.

(f) Prior to commencement of Services and not later than thirty (30) days after the Effective Date, as hereinafter defined, of this Contract, Contractor shall prepare a written site safety plan (the "Site Safety Plan") with respect to the work to be performed at the Site. The Site Safety Plan shall be subject to the review and approval of the USVI. Upon said approval the Site Safety Plan shall remain in effect during the term of this Contract.

7. SITE

(a) Contractor shall perform the remedial Services at the Site in a careful, safe and proper manner. In performing the Services under the Contract, Contractor shall not generate or dispose of any Hazardous Substance (as hereinafter defined) on the Site. In the event of such production or disposal of any Hazardous by Contractor, Contractor shall, at its own cost, immediately remove the Hazardous Substance from the Site.

(b) As used herein, "Hazardous Substances(s)" shall mean any substance which at any time shall be listed as "hazardous" or "toxic" under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 9601 et seq., as amended, or in the regulations implementing such statutes, or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under any other applicable laws (as hereinafter defined). The term "hazardous substances(s)" shall also include, without limitation, raw materials, building components, the products of any manufacturing or other activities on the premises, wastes, petroleum products, or special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 3011, et seq.; as amended.

(c) Contractor shall comply with all applicable Virgin Islands and Federal Laws, ordinances, governmental orders and regulations and other public requirements now and hereafter affecting the remedial Services to be performed by Contractor under this Contract.

(d) Contractor acknowledges that it has visited and is familiar with the site, including its surface physical condition, Geotechnical Conditions (as hereinafter defined), and Environmental Conditions (as hereinafter defined). Contractor further acknowledges that it is familiar with all local and other conditions which may be material to the Services to be performed under this Contract. Contractor acknowledges that prior to commencing work under this Contract it has an affirmative duty to obtain, from persons and professionals licensed to provide such information, evaluate information relating to the condition of the Site, including Geotechnical Reports, as

hereinafter defined, and Environmental Reports, as hereinafter defined. To the extent USVI may have provided Contractor with any information in connection with Contractor's inspection and review of the site, USVI does not warrant any information provided to Contractor and is no liable to Lessee with respect to such information. To the extent USVI has provided Contractor with any information in connection with the above-mentioned inspections and review of the Site, Contractor assumes all risks with respect to such information and is responsible for independently verifying and investigating such information.

(e) Geotechnical Report: Certified report prepared, sealed and signed by a professional engineer specializing in geotechnical engineering that provides the results of a surface and subsurface investigation of the Site (the "Geotechnical Report").

(f) Environment Report: All necessary environmental studies and reports as necessary in support of the remedial Services under the Contract, including obtaining permits for performing said Services (the "Environmental Report").

(g) Environmental Conditions: As used in this Contract the term "Environmental Condition" means surface and subsurface, the presence anywhere in, on or under the Site of underground storage tanks (for the storage of chemicals or petroleum products) or Hazardous Substances disclosed in any geotechnical and environmental assessment reports at the time of the commencement of the Contract or subsequently discovered at the Site.

(h) Geotechnical Conditions: As used here "Geotechnical Conditions: means surface and subsurface conditions, including soil and topographical conditions, of the Site relevant to the remedial Services to be performed at the Site disclosed in any geotechnical and environmental reports at the time of the commencement of the Contract or subsequently discovered at the Site.

8. SITE INSPECTION

(a) USVI and Contractor agree that the remedial measures at the Site established by the EPA satisfy the remedial Services required under the Contract. (Said EPA remedial measures established by the EPA hereinafter referred to as the "EPA Remedial Measures") Contractor shall retain the EPA remedial measures, including the operation and maintenance of any equipment or machinery required to retain the EPA Remedial Measures.

(b) In order to certify that the EPA Remedial Measures at the Site remain effective and meet the purpose and intent of the remedial Services under this Contract, USVI and the Contractor shall conduct a joint inspection of the EPA Remedial Measures in effect at the Site. The joint inspection will consist of a survey of the existing EPA Remedial Measures to determine that said Measures satisfy the remedial measures required under the Scope of Work under this Contract. In the event the inspection discloses any deficiencies, Contractor shall correct the deficiency and conduct testing to certify that the deficiency has been successfully corrected. An attempt shall be made to correct all deficiencies and resolve all issues. If any items remain unresolved, the inspection shall be considered a pre-final inspection requiring another pre-final inspection and report. The

inspection shall be completed upon USVI and Contractor confirming that all outstanding items have been resolved.

(c) Upon satisfactory completion, as provided in subsection (b) of this Section, of the inspection the EPA Remedial Measures, Contractor shall provide USVI with a written remedial action report and plan for each task constituting the Scope of Work under this Contract, which action report and plan shall be subject to the approval of the USVI.

(d) USVI and Contractor shall complete the review and inspection required to implement the remedial Services to be provided under this Contract no later than Thirty (30) days after the Effective Date, as hereinafter defined, of this Contract.

9. OFF-SITE STORAGE, DESTRUCTION, TREATMENT OR DISPOSITION

The parties anticipate the need for off-site storage, destruction, treatment, or disposition of Hazardous Substances in connection with the implementation of the remedial measures referred to in the SOW. USVI, pursuant to Section 104(c)(3)(B) of CERCLA, 42 U.S.C. Section 9604(c)(3)(13), shall assure the availability of a hazardous waste disposal facility which has adequate capacity for off-site storage, destruction, treatment or disposition. The costs of such off-site storage, destruction, treatment or disposition will be paid for by the USVI.

10. INSTITUTIONAL CONTROLS

(a) USVI agrees to implement institutional controls (which may include governmental controls, proprietary controls, or both, as appropriate) sufficient to insure that no one uses groundwater or installs a groundwater well, or excavates or disturbs any impacted soil or rock at the Site without the written permission of the USVI.

(b) To implement the institutional control measures, the USVI shall develop an Institutional Control Plan. The Plan shall provide a detailed description of the institutional controls, the implementation method and schedule, and provide for monitoring of compliance with the controls over time and updating of the controls as needed.

11. OPERATION AND MAINTENANCE

(a) The term "operation and maintenance" ("Operation and Maintenance") as used in the General Provisions, as hereinafter defined, of this Contract shall have the same meanings as "Operate and Maintain" as defined in the Consent Decree. Specifically, "Operation and Maintenance of the Site by Contractor shall include

(i) All measures required to monitor and maintain the effectiveness of the institutional controls established by EPA and referred to in Paragraph J of the SSC; and

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(ii) All measures required to monitor and maintain the effectiveness of the institutional controls established by USVI and referred to in Paragraph 10 of this Contract; and

(iii) All remedial identified in Section K of the SSC and in the statement of Work attached to the SSC. (Said statement of work hereinafter referred to the SSC Statement of Work); and

(iv) All measures required to monitor and maintain the effectiveness of Tasks 2,4,5 and 6 in the SSC State of Work; and

(v) The Site Transfer Agreement attached as Appendix "D" to the Consent Decree and providing for the transfer of responsibilities for the Operation and Maintenance of the remedial measures at the Site from the EPA to USVI.

12. PERMITS

In accordance with Section 121 (e)(1) of CERCLA, 42 U.S.C. § 9621 (e), Federal, State, Territory and local permits are not required for the portion of any remedial action conducted entirely on-Site, where such remedial action is selected and carried out in compliance with Section 121 of CERCLA. However, remedial actions that involve the storage, treatment, or disposal of hazardous substances at off-site facilities shall involve only such off-site facilities that are operating under appropriate Federal, State and/or Territory permits or authorization and other legal requirements, otherwise meet the requirements of Section 121 (d)(3) of CERCLA, 42 U.S.C. § 9621 (d)(3). As requested by Contractor, the USVI shall assist Contractor in obtaining any needed permits for off-Site activities that are necessary to satisfactorily complete the activities described in the SOW.

13. SITE ACCESS

(a) Contractor may attempt to secure access to the Site for itself, its agents and representatives and for contractors performing the work described in the SOW. At the request of Contractor, the USVI shall, to the extent of its legal authority, assist Contractor in obtaining access to the Site.

(b) Authorized employees and agents of the USVI shall have access to the Site as necessary to inspect the performance of Services and as necessary to carry out the USVI's responsibilities under this Contract.

14. INFORMATION REGARDING THE SITE

(a) To the extent permitted by law and as provided in this Paragraph, the USVI, at Contractor's request, shall make available to Contractor information in its possession concerning the Site, with the exception of deliberative and other privileged documents which the USVI would

not otherwise be required to disclose. At the request of the USVI, to the extent permitted by law and as provided in this Paragraph, Contractor shall make available to USVI any information in its possession concerning the Site, with the exception of deliberative and other privileged documents which Contractor would not otherwise be required to disclose. (Also, see subparagraph b, below, with respect to confidential documents.)

(b) USVI Confidential Information. If any information is provided by USVI to Contractor under a claim of confidentiality, said information shall be considered "USVI Confidential Information" and shall be maintained in accordance with this subparagraph. "USVI Confidential Information" shall mean all data, materials, products, technology, computer programs, reports, including environment and geotechnical reports, specifications, manuals, business plans, software, marketing plans, financial information, and other information concerning USVI personnel and relating to the USVI's operations and functions at the Site and classified as confidential under the Virgin Islands and federal statutes and rules and regulations. Contractor agrees that USVI Confidential Information is to be considered confidential and proprietary to the USVI and Contractor shall hold the same in confidence, shall not use USVI Confidential Information except with the specific prior written authorization of the USVI, and shall disclose it only to its officers, directors, or employees with a specific need to know. Contractor will not disclose, publish or otherwise reveal any USVI Confidential Information received from the USVI to any other party whatsoever except with the specific prior written authorization of the USVI. Contractor shall take all necessary steps to safeguard USVI Confidentiality Information in conformity with federal and Virgin Islands statutes, rules and regulations. The provisions of this Section shall not apply to USVI confidential Information that Contractor is required to disclose by law or by court order. In such event the Contractor shall give the USVI at least ten (10) days prior notice of disclosing USVI Confidential Information, which notice shall include the legal authority or court order compelling the disclosure of USVI Confidential Information and state the specific USVI Confidential Information that the Contractor is compelled to disclosure by law or court order. The USVI shall have the right to challenge any demand for the disclosure of USVI Confidential Information made by court order or under the authority of law.

(c) Contractor Confidential Information. If any information is provided by Contractor to USVI under a claim of confidentiality, said information shall be considered "Contractor Confidential Information" and shall be maintained in accordance with this subparagraph. "Contractor Confidential Information" shall mean all information protected or prohibited from disclosure under applicable federal law or state law (including, without limitation, federal or state statutes, rules case law, and privileges), the business practices, strategies, developments, know-how, procedures, methods, methodologies, systems pertaining to the Site and Contractor Services under this Contract at the Site, and not first produced or developed under this Contract. The USVI agrees that Contractor Confidential Information is to be considered confidential and proprietary to Contractor and the USVI shall hold the same in confidence, shall not use Contractor Confidential Information except with the specific prior written authorization of Contractor, and shall disclose it only to its officers, directors, or employees with a specific need to know. The USVI will not disclose, publish or otherwise reveal any Contractor Confidential Information received from the Contractor to any other party whatsoever except with the specific prior written authorization of the Contractor. The USVI shall take all necessary steps to safeguard Contractor Confidentiality Information in conformity with federal and Virgin Islands statutes, rules and regulations. The

provisions of this Section shall not apply to Contractor Confidential Information that the USVI is required to disclose by law or by court order. In such event the USVI shall give Contractor at least ten (10) days prior notice of disclosing Contractor Confidential Information, which notice shall include the legal authority or court order compelling the disclosure of Contractor Confidential Information and state the specific Contractor Confidential Information that the USVI is compelled to disclose by law or court order. Contractor shall have the right to challenge any demand for the disclosure of Contractor Confidential Information made by court order or under the authority of law.

15. RETENTION OF RECORDS AND AUDITS

(a) As used in this Section, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Contractor shall maintain documented and precise records of time and/or money expended under this Contract. Said records shall describe the nature, duration, and amount of services performed under this Contract. The USVI shall have the right to examine and audit all records and other evidence sufficient to reflect properly the compensation and costs payable to Contractor in performance of this Contract and to examine, audit, or reproduce any of Contractor's records involving transactions related to this Contract or a subcontract hereunder and to interview any current employee regarding such transactions. This paragraph may not be construed to require Contractor or any subcontractor hereunder to create or maintain any record that Contractor or a subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(c) In the event the USVI requests an audit of Contractor's records, the audit shall be performed by a third party auditor agreed upon the USVI and Contractor. Contractor shall cooperate with the auditor and provide the documents requested by the auditor with respect to the audit activities. The USVI shall bear all costs associated with the audit activity; provided, however, that if the audit activity discloses that, during the period covered under the audit, the USVI paid monies in excess of 5% of the actual costs and fees for which the USVI was liable under the Contract during said period, then Contractor shall bear all costs associated with the audit activity.

(d) Contractor shall maintain a credible financial management system that meets generally accepted accounting principles for the purpose of audit and examination of records in connection to this Contract.

(e) Contractor shall maintain and make available at its office at all reasonable times the records, materials, and other evidence described in paragraph (a), (b), and (c) of this Section, for examination, audit, or reproduction, for a period of not less than 7 years after final payment under this contract or for any longer period required by statute. If this Contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated for a period of not less than 7 years following such termination.

(f) Contractor shall insert a clause containing all the terms of this Section in all subcontracts entered into under this Contract.

16. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon USVI persons, firms, associations, or corporations engaged by Contractor as servants, agents, independent Contractors, or in any other capacity whatsoever, or make the USVI liable to any such persons, firms, associations or corporations for the acts, omissions, responsibilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

17. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to its profession and to environmental consultants doing business in the United States Virgin Islands.

18. WARRANTY OF SERVICES

(a) As used in this Section, "acceptance" means the act of an authorized representative of the USVI accepts the performance of services under this Contract.

(b) Contractor represents and warrants that the services that are to be performed by Contractor under this Contract will be rendered in a professional and workmanlike and that such services will be performed by persons with the proper skill, training, and background.

(c) Notwithstanding inspection and acceptance by USVI or any provision concerning the conclusiveness thereof, Contractor represents and warrants that all services performed under this Contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract. The USVI shall give written notice of any defect or nonconformance to the Contractor within thirty (30) days of acceptance by the USVI, which notice shall state that the Contractor shall correct or re-perform any defective or nonconforming services.

(d) Contractor represents and warrants that in the event the USVI issues a notice of defective or nonconforming services, Contractor shall, at no cost to the USVI, correct or re-perform the defective and nonconforming services and any services corrected or re-performed by the Contractor shall be subject to this Section to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the USVI may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the USVI thereby, or make an equitable adjustment in the contract price.

19. INSPECTION OF SERVICES

(a) Contractor shall provide and maintain an inspection system acceptable to the USVI covering the services under this Contract. Complete records of all inspection work performed by Contractor shall be maintained and made available to the USVI during Contract performance and for as long afterwards as the Contract requires.

(b) The USVI has the right to inspect and test all services called for by this Contract, to the extent practicable at all places and times during the term of this Contract. The USVI shall perform inspections in a manner that will not unduly delay the work.

(c) If any of the services performed do not conform to the requirements of the scope of work set in Addendum I to this Contract, the USVI may require Contractor to perform the services again in conformity with Contract requirements, for no additional fee. When the defects in services cannot be corrected by re-performance, the USVI may:

- (1) Require Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
- (2) Reduce any fee payable under the Contract to reflect the reduced value of the services performed.

(d) If Contractor fails to promptly perform the services again or take action necessary to ensure future performance in conformity with Contract requirements, the USVI may:

- (1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
- (2) Terminate the Contract for default.

20. ASSIGNMENT

The Contractor shall not assign any rights under this Contract without the prior written approval of the USVI.

21. DELEGATION/SUBCONTRACTING

(a) Subcontracting and Delegating Contract Services. The Contractor shall not subcontract or delegate any part of the services under this Contract without the prior written approval of the USVI, which consent shall not be unreasonably withheld. Contractor warrants that all subcontractor agreements related to this Contract shall comply with all applicable Virgin Islands and federal laws and rules and regulations. Contractor shall be liable to the USVI for the work

performed by its subcontractors and for damages to the USVI resulting from its subcontractor's negligent actions.

(b) Competition in Subcontracting. Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of this Contract. Upon request by the USVI, Contractor shall provide documentation evidencing the bases for the selection of its subcontractors.

(c) Limitations on Subcontracting. Contractor warrants and agrees that no more than 49% of the services under this Contract shall be subcontracted and that Contractor shall at minimum perform 51% of the services under the Contract. Contractor further warrants and agrees that at least 51% of the cost of Contract performance incurred by the USVI under this Contract shall be expended for work performed exclusively by Contractor's employees.

22. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless the USVI from and against any and all loss, damage liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which the USVI may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor or under this Contract and arising from any cause, except the sole negligence of the USVI.

23. LIMITATION OF USVILIABILITY

The USVI's contract liability under or relating to this Contract shall be limited to actual damages and shall in no event exceed the Limitation of Funds, as defined in Addendum II of this Contract applicable to the contract term within which the event giving rise to the claim of liability arose. In no event shall the Government be liable to Contractor for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits or good will) related to this Contract.

24. RIGHTS AND IMMUNITIES PROVIDED BY LAW

The USVI does not waive any rights or immunities provided by law to the USVI.

25. INSURANCE COVERAGE

(a) Contractor agrees to and provide evidence of the following insurance policies in the amount and with the type of coverage shown below:

- (1) Compliance with 24 V.I.C. § 273 requiring employer contributions to the Workers Compensation Insurance Fund.

- (2) Commercial General Liability insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 per occurrence.
- (3) Motor Vehicle Liability, including No-Fault coverage, with limits of liability not less than \$1,000,000.00 per occurrence. Coverage shall include all non-owned vehicles and all hired vehicles.
- (4) Professional Liability insurance in a form acceptable to the USVI with a limit of liability of not less than \$1,000,000.00 per occurrence.

(b) Contractor warrants that during the term of the Contract it shall comply with the above-listed insurance requirements and maintain the above-listed insurance policies in the amounts and type of coverage indicated. The USVI acknowledges that any AAA rate insurance carrier shall be acceptable.

(c) This Contract is subject to Contractor providing the USVI with a Certificate of Insurance evidencing the Commercial General Liability, Motor Vehicle Liability, and Professional Liability insurance coverage described above. Said Certificate of Insurance shall identify Contractor as the "Named Insured" and the USVI as the "Certificate Holder".

(d) If the policy for any liability insurance described above is on a claims-made basis, the policy shall be acceptable provided that Contractor submit with the applicable Certificate of Insurance documentation evidencing an extended reporting tail endorsement for a period of not less than 3 years after the end of the contract term.

(e) Evidence of insurance documentation the required coverage under this Contract shall be provided to the USVI prior to the commencement of services under this Contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, all payments under this Contract shall be withheld until evidence of the extended reporting endorsement is provided to the USVI.

(f) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the USVI's interest shall not be effective until 30 days after the insurer or Contractor gives written notice to the USVI. If, during the performance period of this Contract, Contractor changes insurance providers, the Contractor must provide evidence that the USVI will be indemnified to the limits specified in paragraph (a) of this Section, for the entire period of the Contract, either under the new policy, or a combination of old and new policies.

(g) Contractor shall insert the substance of this Section, including this paragraph (g), in all subcontracts under this contract and shall require such subcontractors to provide evidence of and maintain insurance in accordance with this Section. At least 5 days before the

commencement of work by any subcontractors, the Contractor shall furnish to the USVI evidence of such insurance.

26. TAXES

Contractor covenants that it shall be solely liable for all United State Virgin Islands and federal taxes applicable to Contractor in connection to the services to be performed under this Contract and the transaction under this Contract and shall timely pay all such taxes.

27. INDEPENDENT CONTRACTOR

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status.

28. GOVERNING LAW AND JURISDICTION

This Contract shall be governed by the laws of the United States Virgin Islands, Jurisdiction over all matters and issues arising under and connected to this Contract is exclusive in the courts of the United State Virgin Islands.

29. DISPUTE RESOLUTION

The parties agree that in the event any conflict or disagreement arises under this Contract, neither party shall file any claim or suit against the other party unless it has first provided written notice to the other party of the alleged dispute and unless the following dispute resolution procedure has followed and exhausted.

- (a) The parties shall first submit the dispute in writing to the USVI Project Manager and the Contractor Project Manager for review and resolution. (The USVI Project Manager and the Contractor Project Manager hereinafter collectively referred to as the "Project Managers"). If the Project Managers agree on a resolution to the dispute that is accepted by both parties, the dispute shall be deemed resolved and the parties shall execute a writing memorializing the resolution of the dispute. If the Project Managers cannot agree on a resolution or if the parties do not accept the resolution proposed by the Project Managers, the parties shall proceed directly with the dispute resolution procedure provided for in this Section.
- (b) In the event the dispute is not resolved under the procedure provided in subsection (a) of this Section, the parties shall submit the dispute to mediation in the U.S. Virgin Islands. No lawsuit, claim or controversy shall be filed until the conclusion of the mediation and certification by the mediator that an impasse has been reached or until 90 days has passed, whichever comes first. The parties may submit the dispute to mediation to the American Mediation Institute, the Superior Court of the Virgin Islands,

or the District Court of the Virgin Islands. Any mediator chosen by the parties must be certified by a Court of competent jurisdiction in the Virgin Islands. The cost of mediation shall be shared equally by the parties.

(a) Pending any and all dispute resolution during the 90 day mediation period set forth herein and pending any and all resolution of any lawsuit or claim filed in the event mediation is not successful, Contractor shall continue to perform work under the Contract and the Government shall, pursuant to the provisions of Addendum II of this Contract, continue to pay Contractor for such work.

30. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term, condition or provision of this Contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representative, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

31. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties hereto, and all prior Understandings or communications, written or oral, with respect to the subject matter of this Contract are merged herein.

32. RIGHT TO WITHHOLD

If work under this Contract is not performed in accordance with the terms hereof, USVI will have the right to withhold any payment due to Contractor, such sums as the USVI may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, the USVI may apply such sums in such manner as the USVI may deem proper to secure itself or to satisfy such claims. The USVI will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by the USVI if and while Contractor gives satisfactory assurance to the USVI that such claims will be paid by the Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

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33. CONDITION PRECEDENT

This contract is subject to the approval of the Governor of the Virgin Islands. Also, pursuant to Virgin Islands law, this Contract is subject to the appropriation and availability of funds.

34. TERMINATION FOR CONVENIENCE

(a) USVI may terminate for convenience this contract at any time, in whole or in part by giving written notice to Contractor of such termination and specifying the effective date thereof. If USVI terminates this Contract for convenience as provided herein, Contractor shall be entitled to receive payment for services provided to the date of termination.

(b) In the event of the USVI's termination for convenience under this Section, the USVI and contractor shall negotiate reasonable settlement costs allowable to Contractor. Said costs shall include reasonable allowance for profit for preparations made and work completed by Contractor on the terminated portion of the contract. No profit shall be allowed on post-termination settlement expenses. The parties shall negotiate a reasonable settlement cost to equitably compensate Contractor the demobilization costs incurred by contractor in terminating the work under the Contract. In negotiating or determining profit, factors to be considered include—

- (1) Extent and difficulty of the work done by the Contractor as compared with the total work required by the Contract (engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered);
- (2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;
- (3) Efficiency of the Contractor, with particular regard to:
 - (i) Attainment of quantity and quality production
 - (ii) Reduction of costs;
 - (iii) Economic use of materials, facilities, and manpower; and
 - (iv) Disposition of termination inventory
- (4) Amount and source of capital and extent of risk assumed;
- (5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;
- (6) The rate of profit that the contractor would have earned had the Contract been completed;
- (7) The rate of profit both parties contemplated at the time the Contract was negotiated; and

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- (8) Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlement of terminated subcontracts.

The Primary objective under this subsection (b) is to negotiate a settlement by agreement. Therefore, the parties may agree upon a total amount to be paid the Contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) In the event of termination for convenience under this Section, contractor shall be entitled only to the settlement costs provided for in subsection (b) of this section. Other than said entitlement, Contractor shall not have any right, entitlement, or cause of action, either in contract, equity, or any other legal theory or basis, against USVI, including, but not limited to, anticipatory profits and consequential damages.

35. TERMINATION FOR DEFAULT

(a) The USVI reserves the right to terminate this Contract by providing written notice by certified mail to Contractor on the occurrence of any of the following:

- (1) Contractor's failure to perform the Services contracted for under this Contract or rendering defective or nonconforming services.
- (2) Contractor's failure to perform or comply with any non-Service related contractual obligation under the Contract.
- (3) Contractor furnished any statement, p=representation, warranty, or certification in connection with this Contract that is materially false or deceptive. For purposes of this paragraph a statement, representation, or warranty, or certification is materially false or deceptive if relied upon by the UJSVI in its decision to award this Contract or Contractor or, if made to the USVI subsequent to Contract award, furnished to mislead the USVI that Contractor has satisfied the requisite terms of the Contract.
- (4) If the Contractor, any officer of the Contractor, or any owner of ten percent (10%) or more of the equity ownership of the Contractor is convicted of a crime that the USVI determines would hinder Contractor's ability to perform under this Contract.
- (5) The Contractor's material breach of Contract. For purposes of the paragraph, a material breach is a violation or nonperformance of a Contract term that is substantial and significant or that may result in a liability to the USVI.
- (6) The denial, revocation, or failure to renew any license or certificate required by law or regulation to be held by Contractor to provide the services under this contract.

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(7) Contractor's filing for bankruptcy or in the event of insolvency of Contractor.

(b) In the event of subsections (a)(5), (a)(6), and (a)(7), the USVI shall give Contractor written notice of its intent to terminate ("Notice of Intent") the Contract pursuant to this Section, which Notice of Intent shall specify the state the reason or reasons for termination. Thereupon, CONTRACTOR shall have a period of THIRTY (30) DAYS following receipt of the Notice of Intent to cure such failure or failures (said THIRTY (30) DAYS period hereinafter referred to as the "Cure Period"). If Contractor cures such failure or failures in conformance with the requirements of the Contract within the Cure Period, the USVI Notice of Intent shall be deemed rescinded. If, however, the Contractor fails to cure such failure or failures within the Cure Period, this Contract may terminate upon the lapse of the Cure Period, unless the parties shall otherwise agree in writing. With respect to the filing of a petition for bankruptcy or in the event of insolvency of Contract, should such petition be dismissed or such insolvency no longer exists upon the lapse of the Cure Period, or, if prior to such lapse, Contractor furnishes evidence satisfactory to the USVI of the Contractor's ability to continue, no termination shall result.

(c) In no event shall the USVI be liable for Contractor's costs incurred in responding to any notice given Contractor under this Section. Termination under this Section shall constitute default by Contract. In the event of termination under this paragraph, the USVI shall be entitled to damages for liabilities resulting from the event or breach causing termination. The USVI shall have first priority for all its claims in the event of Contractor's bankruptcy, except for claims that have statutory priority.


36. FORCE MAJEURE

Contractor shall be excused from performance under this Contract for any period that Contractor is prevented from performing any services in whole or in part as a result of acts of God, actions or inactions of the USVI, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes or unusually severe weather, provided that Contractor has prudently and promptly acted to take any and all preventive and/or corrective steps that are within Contractor's control to ensure that Contractor can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed breach of the Contract. This Section shall not relieve the Contractor of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties.

Contractor shall immediately notify the USVI by telephone (to be confirmed in writing, via hand delivery return receipt, within FIVE (5) days of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail all nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform.

37. NON-DISCRIMINATION

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No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this contract on account of race, creed, color, sex, religion, national origin or handicap.

38. CONFLICT OF INTEREST

(a) Contractor covenants that it has no interest and will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.

(b) Contractor further covenants that it is:

(1) Not a territorial officer or employee (i.e. the Governor, Lieutenant Governor, member of the Legislature or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensation on a salary, fee or contractual basis); or

(2) A territorial officer or employee and, as such, has:

(i) familiarized itself with the provisions of Title 3, Chapter 37, Virgin Islands code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;

(ii) Not made, negotiated or influenced this Contract, in its official capacity;

(iii) No financial interest in the Contract as that term is defined in section 1101, (1) of said Code chapter.

39. EFFECTIVE DATE

The effective date of this Contract is upon the signature of the Governor (said date referred to herein as the "Effective Date").

40. NOTICE

Any notice required to be given by the terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

USVI

Commissioner
Department of Property and Procurement
Sub Base, Building No. 1
St. Thomas, VI 00802

Commissioner
Department of Planning and Natural Resources,
Cyril E. King Airport

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St. Thomas, VI 00802

Contractor

Gregory Wallace, R.G.
Arrowhead Contracting, Inc.
10981 Eicher Dr.
Lenexa, KS 66219
(913) 814-9994 Office
(913) 814-9997 Fax
www.arrowhead.org

41. LICENSURE

The Contractor covenants that it has obtained all applicable licenses or permits, temporary or otherwise, as required under Virgin Islands and federal law and regulations to perform under this Contract and that it shall timely renew and pay all fees and taxes associated with such licenses or permits.

42. DEBARMENT CERTIFICATION

By execution of this Contract, the Contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its sub-contracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT." In the event the Contractor or sub-contractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or sub-contractor agrees that it shall not be entitled to payment for any work performed under this Contract or sub-contract and that the Contractor or sub-contractor shall promptly reimburse the USVI for any progress payments heretofore made. If, during the term of this Contract, the Contractor shall become ineligible to receive contract awards using federal funds, this Contract shall be terminated forthwith for cause and the Contractor shall not be entitled to payment for any work performed under this Contract or sub-contract after the effective date of such ineligibility.

43. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the USVI, or any officer, department, board, commissioner, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Islands law.

44. NOTICE OF FEDERAL FUNDING

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any

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claim knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offense.

45. OTHER CONTRACTUAL COMMITMENTS

Contractor represents, assures, and agrees that it has not entered into, and that it shall not enter into, any other contractual commitment, contract, or relationship that will restrict or impair Contractor's performance of its contractual obligations under this Contract.

46. COVENANT AGAINST CONTINGENT FEES

(a) Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the USVI shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) Definitions

"Bona fide agency," as used in this Section, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain USVI contracts nor holds itself out as being able to obtain any USVI contract or contracts through improper influence.

"Bona fide employee," as used in this Section, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain USVI contracts nor holds out as being able to obtain any USVI contract or contracts through improper influence.

"Contingent fee," as used in this Section, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a USVI contract.

"Improper influence," as used in this Section, means any influence that induces or tends to induce a USVI employee or officer to give consideration or to act regarding a USVI contract on any basis other than the merits of the matter.

47. NONSOLICITATION OF USVI EMPLOYEES

Without the prior written consent of the USVI, from the date of this Contract until one year after the expiration or termination of this contract, Contractor shall neither directly nor indirectly, on behalf of themselves or any other individual, corporation, partnership or other entity, employ, solicit for employment or otherwise assist in the solicitation or employment, of any employee of the USVI.

48. KICKBACKS PROHIBITED

(a) Definitions

"Kickback," as used in this Section, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Contractor, Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Contract or in connection with a subcontract relating to this Contract.

"Person," as used in this Section, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Contractor employee," as used in this section, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this Section, means a contract or contractual action entered into by a Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind with respect to this contract.

"Subcontractor," as used in this Section, (1) means any person, other than Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under this Contract or a subcontract entered into in connection with this Contract, and (2) includes any person who offers to furnish or furnishes general supplies to Contractor.

"Subcontractor employee," as used in this Section, means any officer, partner, employee, or agent of a subcontractor.

(b) No person shall:

- (1) Provide or attempt to provide or offer to provide any kickback;
- (2) Solicit, accept, or attempt to accept any kickback; or
- (3) Include, directly or indirectly, the amount of any kickback in the price charged by Contractor under this Contract or in the price charged by a subcontractor to Contractor under a subcontract entered into in connection with this Contract.

(c) Contractor shall have a place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this Section in its own operations and direct business relationships. When Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Section may have occurred, Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Commissioner of the Virgin Islands Department of Property and Procurement and to the Attorney General of the Virgin Islands. Contractor shall cooperate fully with any Virgin Islands or Federal agency investigating a possible violation described in paragraph (b) of this Section. The USVI may (i) offset the amount of the kickback against any monies owed by the USVI

under this Contract and/or (ii) direct that Contractor withhold from sums owed a subcontractor under this contract the amount of the kickback. The USVI may order that monies withheld from sums owed by Contractor to a subcontractor be paid over to the USVI. In all cases, Contractor shall notify the USVI when such monies are withheld. Contractor agrees to incorporate this Section in all subcontracts under this Contract.

49. REPRESENTATION BY COUNSEL

The USVI and Contractor acknowledge that they have had the opportunity to consult with legal counsel and did consult with legal counsel with respect to the terms and provisions of this Contract prior to execution of this Contract. The USVI and Contractor further acknowledge that the terms of this Contract are the result of negotiations between the USVI and Contractor and that the terms of this Contract shall not be construed in favor of, or against, either party by reason of the extent of which the USVI or Contractor, or their respective counsel, participated in its drafting.

50. NO THIRD-PARTY BENEFICIARIES

The rights and obligations under this Contract shall inure solely to the benefit of the USVI and Contractor, and no persons or entity shall be a third party beneficiary of this contract.

51. HEADINGS NOT CONTROLLED

Section headings in this Contract are for convenience only and shall have no binding force or effect and shall not enter into the interpretation of the Contract.

52. SEVERABILITY

In the event that any provision of this Contract shall be held to be invalid, the validity of the remaining provisions of the Agreement shall not in any way be affected thereby.

53. OTHER PROVISIONS

The addendum I (Statement of Work), Addendum II (Compensation), and Addendum III (Consent Decree) attached to this Contract and all appendices, schedules, and exhibits attached to this Addenda are incorporated into and made a part of this Contract. In the event of a conflict between the general provisions of this Contract, set out in Sections 1 through 53 of this Contract (the "General Provisions") and any Addendum constituting a part of this Contract, the terms and provisions of the General Provisions of the Contract shall prevail.

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IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

Sherrill Allen

J. Oriol
Honorable Jean-Pierre Oriol
Acting Commissioner
Department of Planning and Natural Resources

15-Oct-2014
Date

Lisa Mill

Lynn Millin Maduro
Honorable Lynn Millin Maduro
Commissioner, Department of Property & Procurement

10/31/14
Date

Ruth M. Z

ARROWHEAD CONTRACTING, INC.
d/b/a Arrowhead Environmental Services

Gregory Wallace
Gregory Wallace,
Vice-President

2 October 2014
Date

ATTEST: [Signature]

[corporate seal]

APPROVED:

[Signature]
John P. de Jongh, Jr.
Governor, U.S. Virgin Islands

12/2/2014
Date

APPROVED TO LEGAL SUFFICIENCY
DEPARTMENT OF JUSTICE

By: [Signature]

11/21/14
Date

Funding

Document

No. _____

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[Signature]

ADDENDUM I
STATEMENT OF WORK

**Scope of Work Associated with Transfer to Government of the
Virgin Islands of Remedial Action Responsibilities and Operation and
Maintenance for the Tutu Wellfield Superfund Site, USVI**

As provided under this Contract, Contractor shall perform on behalf of the USVI the following services associated with the transfer to the Government of the Virgin Islands of Remedial Action Responsibilities and Operation and Maintenance for the Tutu Wellfield Superfund Site located on St. Thomas, U.S. Virgin Islands. (Said services hereinafter referred to as the "Statement of Work"). The tasks defined under this Statement of Work shall be performed during the term of this Contract, as said term is defined and specified in Section 3 of the General Provisions of this Contract. The Statement of Work shall consist of:

1. The following Tasks on an annual basis:
 - Task 1- Monthly O&M and GWTF
 - Task 2 - Monthly O&M of GWTF
 - Task 3 - Repairs Costs in Excess of \$500/Month in Material Costs
 - Task 4 – annual site-wide Ground water Sampling
 - Task 5 – annual Report
 - Task 6 – CLP VOC Analysis
 - Task 8 – Nitrate Analysis
 - Task 9 – Sulfate Analysis
 - Task 10 – Chloride Analysis
 - Task 11 – Ethene/Ethane Analysis
 - Task 12 – TSS Analysis
 - Task 13 – TO-14 Analysis

The scope of services associated with Tasks 1 and 2 will include project administration and management; provision of a plant operator, daily readings of key operational parameters; response and implementation of corrective actions to alarm conditions; restarting of remediation systems as needed in response to routine power outages, electrical phase-outs, and default control conditions; collection, packaging, documentation, and shipment of effluent and influent compliance samples; entry of compliance sample laboratory results into the site database; data validation of the compliance sample results; monthly downloading of data loggers in monitoring wells; monthly measurement and recording of water levels in monitoring wells; furnishing and batching of sequestrate and acid chemical additives; change-out of bag fillers; calibration of pH probes; inspection of chemical lines for wear; periodically restarting computers to embrace performance; lubrication of equipment as needed; diagnosis and minor corrective action (if total direct costs for total corrective actions is less than \$500 for the month) of control and equipment issues associated with the process equipment, Programmable Logic

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Controller (PLC), process instrumentation, and devices (including variable frequency drives); periodic dismantling and cleaning of air strippers; periodic repair or replacement of minor (if total direct costs for total corrective actions is less than \$500 for the month) process equipment and instrumentation; minor rehabilitation of extraction wells to improve well performance; rehabilitation of up to 5 monitoring well surface casings annually; preparation of Monthly O&M Reports; general housekeeping of the facilities; touch-up painting as needed; grounds maintenance including vegetation control and cleaning of concrete; preparation of the facilities for major weather events like hurricanes; inspection of outfall locations after major storm events; clearance of vegetation or objects placed by landowners as needed to maintain access of monitoring well locations; compliance with existing Health and Safety Plan and Quality Assurance Project Plan (QAPP) including maintenance of OSHA HAZWOPER certification and medical monitoring; and, monthly phone, data, electrical, and water services.

Task 3 will consist of repairs of equipment or to the building costing in excess of \$500 in total direct costs in any given month. Corrective actions completed under Task 3 will only be completed with approval of the Virgin Islands Department of Planning and Natural Resources. Repairs completed under Task 3 shall be billed based on direct cost (demonstrated through receipts or invoices) plus the in-place markup of 15% (which also existed for the Site prior to the transfer of the operations and maintenance by the EPA to the USVI). Further, DPNR c/o the Commissioner or the Commissioner's designee shall be notified by Contractor of Task 3 repairs of equipment or to the building costing in excess of \$500.

Task 4 will consist of collection, packaging, documentation, shipment, data validation, and database entry associated with groundwater samples for the Site-Wide Annual Groundwater Sampling Program.

Task 5 will consist of preparation of the Annual Report of EPA. It is understood that EPA will furnish the existing electronic drawing files and database files used in preparation of previous Annual Reports for Arrowhead's use in preparation of the report.

Tasks 6 through 13 consist of laboratory analyses associated with the compliance and annual site-wide groundwater sampling.

To the extent clarification of the above defined Scope of Work is needed during the Term, Tasks 2, 4, 5, and 6 as described in the Statement of Work attached as Appendix "B" to the Superfund State Contract entered into between the Government of the Virgin [Islands] and the U.S. Environmental Protection Agency in 2002 and the attached as Appendix "A" to the Consent Decree may be referred to for guidance. Said Tasks 2, 4, 5, and 6 from the Statement of Work attached as Appendix "B" to the Superfund State Contract entered into between the

Government of the Virgin [Islands] and the U.S. Environment Protection Agency in 2002 are described as follows:

Task 2: Construct and operate a groundwater remediation system on the Curriculum Center property behind the existing building, to achieve hydraulic control of CVOC source at this location. The system is expected to include three extraction wells and a treatment facility. The extraction wells are RW-6 and RW-7, which are already in place, and RW-8, which will be installed during the construction phase. The treatment facility is expected to include an Air-Stripper and UV Oxidation, Containment Structure, Equalization tank, Pumps and the associated Instrumentation and Control panels. The treatment facility will have an operating range of 20 to 60 gallons per minute (gpm). Effluent water will be discharged in the existing storm sewer.

Task 4: Construct and operate a groundwater remediation system at the leading edge of the northern CVOCs plume to achieve hydraulic control of the CVOCs. This system will be installed south of the Esso facility. The system is expected to include two extraction wells and a treatment facility. The extraction wells are RW-1, which is already in place and RW-18, which will be installed during the construction phase. The treatment facility is expected to include Air-Stripper, Containment Structure, Equalization tank, Pumps and the associated Instrumentation and Control panels. The treatment facility will have an operating range of 5 to 30 gpm. Effluent water will be discharged in the existing storm sewer.

Task 5: Perform Monitored Natural Attenuation (MNA) for the southern CVOC plume.

Task 6: Conduct semi-annual groundwater sampling at the Site to monitor the groundwater quality and containment migration until EPA determines that the aquifer restoration goals have been met.

2. "Operate and Maintain" as set forth in the Site Transfer Agreement entered into between the Government of the Virgin Islands and the U.S. Environmental Protection Agency in 2002 and attached as Appendix "A" to the Consent Decree.
3. "Operation and Maintenance" as set forth in the Site Transfer Agreement entered into between the U.S. Environmental Protection Agency and the Virgin Islands Department of Planning and Natural Resources ("DPNR"), and attached as Appendix "D" to the Consent Decree, providing for the transfer to DPNR of the responsibility for the operation and maintenance for the Tutu Wellfield Superfund Site located on St. Thomas, U.S. Virgin Islands.

4. The "Shadowing" measures and operation described in the "Terms of Shadowing" attached as Appendix "D" to the Consent Decree.

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ADDENDUM II
COMPENSATION

1. PAYMENTS

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this Contract and this Addendum II, the Government shall compensate Contractor for the performance of the services described in Addendum I of this Contract.

(b) *Contractor request for performance-based payment.* The Contractor may submit an invoice for payment not more frequently than monthly, in a form and manner acceptable to the Government. Payments in any period for which compensation is being requested shall be included in a single invoice, appropriately itemized and totaled. All invoices shall contain the information and certification detailed in paragraphs (k) and (k) of this Section.

(c) *Approval and payment of Invoices.*

- (1) The Contractor shall not be entitled to payment of an invoice prior to successful accomplishment of the services for which payment is requested. The Government shall determine whether the services for which payment is requested have been successfully accomplished in accordance with the terms of the Contract. The Government may, at any time, require the Contractor to substantiate the successful performance of any services which has been or is represented as being payable.
- (2) The Government will pay approved invoices on the THIRTY-FIFTH (35th) day after receipt of an invoice. However, the Government is not required to provide payment if the Government requires substantiation as provided in paragraph (c) (i) of this Section, or inquiries into the status of a performance criterion, or into any of the conditions listed in paragraph (e) of this Section, or into the Contractor certification. The payment period for an invoice shall commence upon the Government's receipt of the invoice. In the event of non-payment of the approved invoices within the 35 day period, Contractor shall provide written notice to DPNR c/o the Commissioner and the V.I. Department of Justice c/o Office of the Attorney General. The Government shall then have ten (10) business days to cure the non-payment. In the event Contractor is not paid during the ten (10) business day cure period, then Contractor may thereafter

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elect to cease work and to reserve all its rights for payment of the aforementioned invoice(s). In no event, even upon non-payment of invoices as provided above, shall contractor shut down or remove the equipment at the Site. At no time shall Contractor have to pay for power or electrical bills at the site following the expiration of the cure period.

(d) *Reduction or suspension of performance-based payments.* The Government may reduce or suspend Contract payments to Contractor after finding upon substantial evidence any of the following conditions:

1. The Contractor failed to comply with any material requirement of this Contract (which includes paragraphs (g) and (h) of this Section).
2. Performance of this Contract is endangered by the Contractor's:
 - (A) Failure to make progress; or
 - (B) Unsatisfactory financial condition.
- (3). The Contractor is delinquent in payment of any subcontractor or supplier under this Contract in the ordinary course of business.

(e) *Title*

- (1) Title of the property described in this paragraph shall vest in the Government. Vestiture shall be immediately upon the date of the first invoice payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.
- (2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:
 - (A) Parts, material, inventories, and work in process;
 - (B) Special tooling and special test equipment to which the Government is to acquire title;
 - (C) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (e)(2)(iii) of this Section; and

- (D) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this Contract.

(f) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this Section.

(g) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this Section. The Contractor shall have no entitlement to payments under this Contract during any time the Contractor's records or controls are determined by the Government to be inadequate for administration of this Section.

(h) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Government for the administration of this Section. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this Contract for administration of the Section.

- (i) *Reservation of rights.* The Government's rights and remedies under this clause:

- (1) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Contract; and
- (2) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (k) of this clause.

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(k) *Content of Contractor's certification.* As required in paragraph (j)(5) of this clause, the Contractor shall make the following certification in each invoice submitted for payment:

I certify to the best of my knowledge and belief that:

- (1) This request for payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the Contract and the instructions of the Government;
- (2) (Except as reported in writing on N/A), all payments to subcontractors and suppliers under this Contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on N/A) against the property acquired or produced for, and allocated or properly chargeable to, the Contract which would affect or impair the Government's title; and
- (4) After the making payment on this invoice, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitations in the Contract, and the amount of all payments under the Contract will not exceed any limitation in the Contract.

2. LIMITATION OF COST

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than the estimated cost specified in the Addendum II Cost Schedule attached as Schedule "A" to this Addendum II of the Contract. (Said estimated cost specified in the Addendum II Cost Schedule hereinafter referred to as the "Limitation of Cost"). The Contractor agrees to use its best efforts to perform the work specified in Addendum I [o]f this Contract and all obligations under this contract within the Limitation of Cost.

(b) The Contractor shall notify the Government in writing whenever it has reason to believe that:

- (1) The costs the Contractor expects to incur under this Contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the Limitation of Cost; or
- (2) The total cost for the performance of this Contract will be either greater or substantially less than had been previously estimated.

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(c) As part of the notification, the Contractor shall provide the Government a revised estimate of the total cost of performing this Contract.

(d) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this Section:

- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the Limitation of cost; and
- (2) The Contractor is not obligated to continue performance under this Contract (including actions under the Termination clause of this Contract) or otherwise incur costs in excess of the Limitation of Cost specified in the Addendum II Cost schedule, until the Government (i) notifies the Contractor in writing that the Limitation of Cost has been increased and (ii) provides a revised estimated total cost of performing this Contract.

(e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) of this Section, or from any person other than an authorized agent of the Government, shall affect this contract's Limitation of cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the Limitation of Cost whether those excess costs were incurred during the course of the Contract or as result of termination.

(f) If the Limitation of Cost is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Government issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the Limitation of Cost to the Government, unless they contain a statement increasing the Limitation of cost.

(h) If this contract is terminated or the Limitation of Cost is not increased, the Government and Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.

3. LIMITATION OF FUNDS

(a) The parties estimate that performance of this contract will not cost the Government more than the estimated cost specified in the Addendum II Cost Schedule attached as Schedule "A" to Addendum II of the Contract. (Said estimated cost specified in said Schedule hereinafter referred to as the "Project cost Estimate"). The Contractor agrees to use its best efforts to perform the work specified in Addendum I of this Contract and all obligations under this Contract within the Project Cost Estimate.

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(b) The Project Cost Estimate specifies the amount presently available for payment by the Government and allotted to this Contract, the services to be performed under this Contract, and the period of performance it is estimated the allotted amount will cover. (Said amount hereinafter referred to as the "Limitation of Funds"). The parties contemplate that the Government will allot additional funds incrementally to the Contract up to the full Limitation of Funds. The Contractor agrees to perform, or has performed, work on the Contract up to the point at which the total amount paid and payable by the Government under the Contract approximates but does not exceed the total amount actually allotted by the Government of the Contract.

(c) The Contractor shall notify the Government in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount so far allotted to the [c]ontract by the Government. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Government in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Government will terminate this Contract on the date in accordance with the provisions of the Termination Clause in this Contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Government may terminate this Contract on that later date.

(f) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this clause:

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the Limitation of Funds; and

(2) The Contractor is not obligated to continue performance under this Contract (including actions under the Termination Clause of this Contract) or otherwise incur costs excess of the Limitation of Funds.

(g) The Project Cost Estimate shall be increased to the extent that the amount allotted by the Government exceeds the estimated cost specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this Section, or from any person other than an authorized

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representative of the Government, shall affect the amount allotted by the Government to this Contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this Contract, whether incurred during the course of the Contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the Contract is increased, any costs the contractor incurs before the increase that are in excess of the amount previously allotted by the Government shall be allowable to the same extent as if incurred afterward, unless the contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the Project cost Estimate, unless they contain a statement increasing the amount allotted by the Government for the Contract.

(k) Nothing in this clause shall affect the right of the Government to terminate this Contract. If this Contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the Contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of work, the Contractor is entitled to a percentage of the fee specified in the Schedule equal to the percentage of completion of the work contemplated by this Contract.

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SCHEDULE A TO ADDENDUM II
Pricing Schedule 2014-2015
Operations and Maintenance
Tutu Wellfield Superfund Site, St. Thomas, USVI

| | | 2014-2015 | | | |
|---------|--|-----------|-----------------|-------------|-------------------|
| | Description | Units | Unit of Measure | Unit Rate | Total Annual Cost |
| Task 1 | Site #1 Monthly Cost | 12 | Months | \$20,564.00 | \$246,768.00 |
| Task 2 | Site #2 Monthly Cost | 12 | Months | \$1,568.00 | \$18,816.00 |
| Task 3 | Allowance for Repairs in Excess of \$500/month in Direct costs | 1 | Lump sum | \$20,000.00 | \$20,000.00 |
| Task 4 | Total annual sampling costs | 1 | Lump sum | \$17,277.00 | \$17,277.00 |
| Task 5 | Annual Report | 1 | Lump sum | \$17,726.00 | \$17,726.00 |
| Task 6 | CLP VOC analysis | 135 | Each | \$160.00 | \$21,600.00 |
| Task 7 | TOC analysis | 123 | Each | \$41.44 | \$5,07.12 |
| Task 8 | Nitrate Analysis | 7 | Each | \$23.68 | \$165.76 |
| Task 9 | Sulfate analysis | 7 | Each | \$17.76 | \$124.32 |
| Task 10 | Chloride analysis | 7 | Each | \$17.76 | \$132.32 |
| Task 11 | Ethane/Ethane analysis | 7 | Each | \$94.72 | \$663.04 |
| Task 12 | TSS analysis | 116 | Each | \$17.76 | \$2,060.16 |
| Task 13 | TO-14 Analysis | 13 | Each | \$254.56 | \$3,309.28 |
| | | | | | \$353,731.00 |

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ADDENDUM III- CONSENT DECREE

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IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS,

Defendant.

Civil Action No. 09-122

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter, United States of America v. Government of the U.S. Virgin Islands, Civil Action No. 09-122, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Tutu Wellfield Superfund Site in St. Thomas, U.S. Virgin Islands ("the Site").

B. On September 29, 1995, the Site was listed on the NPL. On August 5, 1996, EPA issued a Record of Decision which addressed both contaminated soil and groundwater at the Site.

C. The Settling Defendant that has entered into this Consent Decree, the Government of the U.S. Virgin Islands ("USVI"), does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

D. In response to the release or threatened release of hazardous substances at or from the Site, EPA performed response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will perform additional response actions in the future.

E. In performing response actions at the Site, EPA incurred response costs and will incur additional response costs in the future.

F. The United States alleges that USVI is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and may be liable for response costs incurred and to be incurred at the Site.

G. In its answer to the United States' complaint, the USVI denied the allegations and claims for relief and pled a number of affirmative defenses. By entering into this Consent Decree the USVI does not waive or concede its affirmative defenses and denials of the United States' allegations.

H. In 2002, the Parties entered into a *Superfund State Contract Between The Government of the U.S. Virgin Islands And The U.S. Environmental Protection Agency For Remedial Activities Related To The Tutu Wellfield Superfund Site In St. Thomas, U.S. Virgin Islands* ("SSC"), with an attached Statement of Work ("SOW"). The SSC and the SOW are attached as Appendix A.

I. The United States has been operating the treatment system at the Site, which became operational and functional, as defined in 40 C.F.R. Section 300.435(f)(2), on April 17,

2004. In April 2009, EPA conducted the first five-year review of the Site. The five-year review found that the implemented remedy is functioning as set forth in the decision documents and is protecting public health and the environment. Pursuant to 104(c)(3)(A) of CERCLA, 42 U.S.C. § 9604(c)(3)(A), and the SSC, the USVI is obligated to commence Operation and Maintenance of the remedial measures identified in Section K of the SSC and in the SOW on April 16, 2014.

J. The United States and USVI agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607, and 9613(b) and also has personal jurisdiction over USVI. Solely for the purposes of this Consent Decree and the underlying complaint, USVI waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. USVI shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, and upon USVI. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of USVI under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto and incorporated herein. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

The term "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In

computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the response action; and/or (c) provide information intended to modify or guide human behavior at the Site.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Operate and Maintain" shall mean (a) "Operation and Maintenance" as set forth in the SSC; and (b) all measures required to operate, monitor, and maintain the effectiveness of Tasks 2, 4, 5, and 6 as set forth in the Statement of Work attached to the SSC; and (c) "Operation and Maintenance" as set forth in the Transfer Agreement, commencing on April 16, 2013.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States and/or the USVI.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the Remedial Action Objectives as set forth in the ROD and any modified standards which maybe established pursuant to this Consent Decree.

"Plaintiff" shall mean the United States.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate

land records office.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action Objectives" shall mean the specific goals for protecting human health and the environment set forth in the ROD for the Site.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean the Government of the U.S. Virgin Islands.

"Shadow" shall mean all measures identified in Appendix B.

"Site" shall mean the Tutu Wellfield Superfund site, located in the upper Turpentine Run basin in eastern central St. Thomas, U.S. Virgin Islands, in the Anna's Retreat section of the island, and generally shown on the map included as Appendix C, and all areas to which Waste Materials from the Site have migrated.

"Superfund State Contract" or "SSC" shall mean the 2002 *Superfund State Contract Between The Government of the U.S. Virgin Islands And The U.S. Environmental Protection Agency For Remedial Activities Related To The Tutu Wellfield Superfund Site In St. Thomas, U.S. Virgin Islands* and its Appendices which are attached as Appendix A.

"Transfer Agreement" is the Agreement attached as Appendix D, which sets forth the obligations of the Parties regarding the transfer of the EPA-funded remedial action responsibilities to USVI.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

V. STATEMENT OF PURPOSE

4. The Parties have entered into this Consent Decree in the spirit of mutual cooperation and with the mutual objective that USVI undertake work at the Site to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, as provided in the Covenants Not to Sue by United States in Section IX, and subject to the Reservations of Rights by United States in Section X.

VI. WORK OBLIGATIONS

5. Beginning on April 16, 2012, USVI shall Shadow EPA and its contractors, in accordance with the terms outlined in Appendix B, while EPA continues to perform remedial activities at the Site until April 15, 2013.

6. Beginning on April 16, 2013, USVI shall Operate and Maintain the remedial action at the Site.

VII. DISPUTE RESOLUTION

7. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of USVI that have not been disputed in accordance with this Section.

8. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute.

9. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, USVI invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by USVI. The Statement of Position shall specify USVI's position as to whether formal dispute resolution should proceed under Paragraph 10 (Record Review) or Paragraph 11.

b. Within 20 days after receipt of USVI's Statement of Position, EPA will serve on USVI its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 10 (Record Review) or 11. Within 20 days after receipt of EPA's Statement of Position, USVI may submit a Reply.

c. If there is disagreement between EPA and USVI as to whether dispute resolution should proceed under Paragraph 10 (Record Review) or 11, the Parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if USVI ultimately appeals to the Court to resolve the dispute, the Court shall

determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 10 and 11.

10. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by USVI regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

b. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 10.a. This decision shall be binding upon USVI, subject only to the right to seek judicial review pursuant to Paragraphs 10.c. and 10.d.

c. Any administrative decision made by EPA pursuant to Paragraph 10.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by USVI with the Court and served on all Parties within 15 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to USVI's motion.

d. In proceedings on any dispute governed by this Paragraph, USVI shall have the burden of demonstrating that the decision of the Director of the Emergency and Remedial Response Division is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 10.a.

11. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law shall be governed by this Paragraph.

a. Following receipt of USVI's Statement of Position submitted pursuant to Paragraph 9, the Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final decision resolving the dispute. The Emergency and Remedial Response Division Director's decision shall be binding on USVI unless, within 15 days after receipt of the

decision, USVI files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to USVI's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

12. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of USVI under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise.

VIII. STIPULATED PENALTIES

13. Stipulated Penalty. In the event USVI fails to Operate and Maintain the system in accordance with Paragraph 6, during the period from April 16, 2013 to April 16, 2014, USVI shall be liable for a stipulated penalties as follows:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Non Compliance</u> |
|--------------------------------------|---------------------------------|
| \$1,000 per day | 1st through 14th Day |
| \$2,000 per day | 15th through 31st Day |
| \$4,000 per day | 31st Day and beyond |

14. Following EPA's determination that USVI has failed to Operate and Maintain the system as set forth in Paragraph 13, EPA may give USVI written notification of the same and describe the noncompliance. Any such notice shall constitute a demand for payment.

15. Stipulated Penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a decision by the Director of the Emergency and Remedial Response Division EPA Region 2, under Paragraph 10.b or 11.a of Section VII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that USVI's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (b) with respect to judicial review by this Court of any dispute under Section VII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute.

16. Stipulated Penalties shall continue to accrue as provided in Paragraph 15 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 30 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, USVI shall pay all accrued penalties determined by the Court to be owed to EPA within 90 days after receipt of the Court's decision or order, except as provided in Paragraph 16.c;

c. If the District Court's decision is appealed by any Party, USVI shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to USVI to the extent that they prevail.

17. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Section shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"

and shall reference the CDCS Number, Site/Spill ID Number 021D, and DOJ Case Number 90-11-3-09838.

18. At the time of payment, USVI shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 021D, and DOJ Case Number 90-11-3-09838.

19. If USVI fails to pay stipulated penalties when due, USVI shall pay Interest on the unpaid stipulated penalties, and Interest shall accrue from the date of demand under Paragraph 14 until the date of payment. If USVI fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

20. If the United States brings an action to enforce the USVI's obligation to Operate and Maintain the remedial action in accordance with Paragraph 6, during the period from April 16, 2013 to April 16, 2014, the USVI shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

21. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of USVI's failure to comply with the requirements of this Consent Decree.

22. The payment of penalties and interest, if any, shall not alter in any way USVI's obligation to complete the performance of the Work required under this Consent Decree.

23. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of USVI's violation of this Consent Decree or of the statutes and regulations upon which it is based.

24. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse USVI from performance of any other requirements of this Consent Decree.

IX. COVENANTS NOT TO SUE BY UNITED STATES

25. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against USVI pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), regarding the Site. These covenants shall take effect upon the Effective Date. These covenants not to sue are conditioned upon the satisfactory performance by USVI of its obligations under this Consent Decree. These covenants not to sue extend only to USVI and do not extend to any other person.

X. RESERVATION OF RIGHTS BY UNITED STATES

26. The United States reserves and this Consent Decree is without prejudice to, all rights against USVI with respect to all matters not expressly included within the Covenants Not to Sue by United States in Paragraph 25. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against USVI with respect to:

- a. liability for failure of USVI to meet a requirement of this Consent Decree;
- b. criminal liability;

c. Section 104(d)(2) of CERCLA, 42 U.S.C. § 9604(d)(2), nothing herein shall affect the rights of the United States to enforce the SSC, and all obligations therein, in a separate action;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. liability based on the ownership or operation of the Site by USVI when such ownership or operation commences after signature of this Consent Decree by USVI;

f. liability based on USVI's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a Waste Material at or in connection with the Site, after signature of this Consent Decree by USVI; and

g. liability arising from the past, present, or future disposal, release, or threat of release of a Waste Material outside of the Site.

XI. COVENANTS NOT TO SUE BY USVI

27. USVI covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and this Consent Decree, provided however that to the extent USVI may have a claim against a contractor who manufactured or installed any part of the remedial action, such claim is not affected by this Consent Decree. The covenants not to sue include but are not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, relating to the Site;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the Virgin Islands, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or territorial law, relating to the Site.

28. Except as provided in Paragraph 30 (claims against other PRPs) and Paragraph 35 (Res Judicata and Other Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section X (Reservations of Rights by United States), other than in Paragraph 26.a (claims for failure to meet a requirement of the Consent Decree) or 26.b (criminal liability), but only to the extent that USVI's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

29. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

30. USVI agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for response costs relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that USVI may have against any person if such person asserts a claim or cause of action relating to the Site against USVI.

31. USVI reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

32. Except as provided in Paragraph 30 (claims against other PRPs), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 30 (claims against other PRPs), each of the Parties expressly reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

33. The Parties agree, and by entering this Consent Decree this Court finds, that this settlement constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that USVI is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States

or any other person; provided, however, that if the United States exercises rights under the reservations in Section X (Reservations of Rights by United States), other than in Paragraphs 26.a (claims for failure to meet a requirement of the Decree) or 26.b (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

34. USVI shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, USVI shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

35. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, USVI shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants Not to Sue by United States set forth in Section IX.

XIII. ACCESS

36. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by USVI, USVI shall, commencing on the Effective Date, provide the United States and its representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity relating to response action at the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial, or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by USVI or its agents, consistent with Section XV (Access to Information);
- g. Assessing compliance by USVI with this Consent Decree;

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h. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

i. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

37. Commencing on the date of lodging of the Consent Decree, USVI shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material related to the Site or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal or remedial measures to be performed at the Site.

38. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. FORCE MAJEURE

39. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of USVI, of any entity controlled by USVI, or of USVI's contractors that delays or prevents the performance of any obligation under this Consent Decree despite USVI's best efforts to fulfill the obligation. The requirement that USVI exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

40. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which USVI intend or may intend to assert a claim of force majeure, USVI shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency and Remedial Response Division, EPA Region 2, within 72 hours of when USVI first knew that the event might cause a delay. Within 20 days thereafter, USVI shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; USVI's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of USVI, such event may cause or contribute to an endangerment to public health or welfare, or the environment. USVI shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. USVI shall be deemed to know of any circumstance of which USVI, any entity controlled by USVI, or USVI's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude USVI from

asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 39 and whether USVI has exercised its best efforts under Paragraph 39, EPA may, in its unreviewable discretion, excuse in writing USVI's failure to submit timely notices under this Paragraph.

41. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify USVI in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify USVI in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

42. If USVI elects to invoke the dispute resolution procedures set forth in Section VII (Dispute Resolution), it shall do so no later than 25 days after receipt of EPA's notice. In any such proceeding, USVI shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that USVI complied with the requirements of Paragraphs 39 and 40. If USVI carries this burden, the delay at issue shall be deemed not to be a violation by USVI of the affected obligation of this Consent Decree identified to EPA and the Court.

XV. ACCESS TO INFORMATION

43. USVI shall provide to EPA, upon request, copies of all records, reports, or information (including records, reports, documents and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

44. Confidential Business Information and Privileged Documents. USVI may assert business confidentiality claims covering part or all of the Records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified USVI that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to USVI.

45. USVI may assert that certain Records are privileged under the attorney-client

privilege or any other privilege recognized by federal law. If USVI asserts such a privilege in lieu of providing Records, it shall provide Plaintiff with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. USVI shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in USVI's favor. However, no Records created or generated pursuant to the requirements of this or any other settlement with EPA pertaining to the Site shall be withheld from the United States on the grounds that they are privileged or confidential.

46. No claim of confidentiality or privilege shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XVI. NOTICES AND SUBMISSIONS

47. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to EPA, DOJ, and USVI, respectively.

As to the DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-09838

As to EPA:

Andrew Praschak
Office of Regional Counsel
New York/Caribbean Superfund Branch
U.S. Environmental Protection Agency
Attn: Tutu Wellfield Superfund Site Attorney
290 Broadway, 17th Floor
New York, NY 10007-1866

Caroline Kwan
Remedial Project Manager
New York Remediation Branch
Emergency and Remedial Response Division
U.S. E.P.A. Region II

290 Broadway
New York, NY 10007-1866
(212) 637-4275

As to USVI:

Attorney General Vincent F. Grazer
Government of the U.S. Virgin Islands
Department of Justice
Office of Attorney General
34-38 Kronrindens Gade
GER Complex, 2nd Floor
Charlotte Amalie, St. Thomas
Virgin Islands 00802

H. Marc Tepper, Esquire
Buchanan Ingersoll & Rooney PC
Two Liberty Place
50 S. 16th Street, Suite 3200
Philadelphia, PA 19102-2555

XVII. RETENTION OF JURISDICTION

48. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

49. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the State Superfund Contract "SSC" and the Statement of Work "SOW"; "Appendix B" is the Terms of Shadowing; "Appendix C" is a map of the Site; "Appendix D" is the Transfer Agreement.

XIX. MODIFICATION

50. Material modifications to this Consent Decree, including the Appendices, shall be in writing, signed by the United States and USVI, and shall be effective upon approval by the Court. Non-material modifications to this Consent Decree, including the Appendices, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and USVI. A modification shall be considered material if it fundamentally alters the basic features of the obligations of this Consent Decree.

51. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

52. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. USVI consents to the entry of this Consent Decree without further notice.

53. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXI. SIGNATORIES/SERVICE

54. The Assistant Attorney General of the United States Department of Justice and the Attorney General of the Government of the Virgin Islands each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

55. USVI agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified USVI in writing that it no longer supports entry of the Consent Decree.

56. USVI shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. USVI agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXII. FINAL JUDGMENT

57. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

58. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and the Government of the U.S. Virgin Islands. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2012.



Curtis V. Gomez
United States District Judge

PC009PNR15



FOR THE UNITED STATES OF AMERICA:

4/27/12
Date

Ignacia S. Moreno
IGNACIA MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

6/12/12
Date

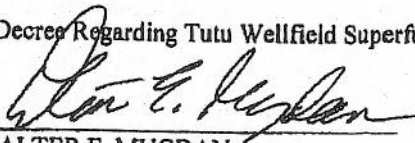
Myles E. Flint, II
MYLES E. FLINT, II
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

RONALD W. SHARPE
United States Attorney
United States Virgin Islands

JOYCELYN HEWLETT
Assistant United States Attorney
United States Virgin Islands

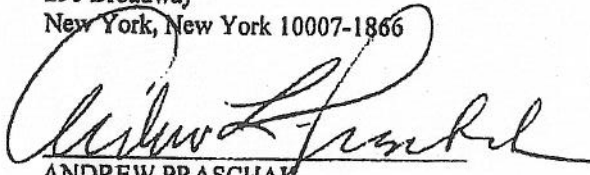
Signature Page for Consent Decree Regarding Tutu Wellfield Superfund Site

June 14, 2012
Date


WALTER E. MUGDAN

Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866

June 14, 2012.
Date



ANDREW PRASCHAK

Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007-1866



**FOR THE GOVERNMENT OF THE U.S. VIRGIN
ISLANDS**

June 12, 2012
Date


VINCENT F. KRAZER
Attorney General
Government of the U.S. Virgin Islands
Department of Justice
Office of Attorney General
34-38 Kronrindens Oade
GER Complex, 2nd Floor
Charlotte Amalie, St. Thomas
Virgin Islands 00802